IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5800 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHAIKH NURU SHAIKH BASHIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5800 of 2002

MR AR SHAIKH for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of

detention dated 7.4.2002 passed against him by the Commissioner of Police, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as a "bootlegger" within the meaning of Section 2(b) of the PASA Act.

2. The sponsoring authority placed the papers before the detaining authority branding the petitioner as "bootlegger" and the detaining authority while passing the impugned order of detention and to record subjective satisfaction, has placed reliance on the fact that the petitioner was found involved in the offence punishable under the provisions of the Bombay Prohibition Act with Athwa Lines Police Station, Surat City being Athwa Police Station III CR No. 149/2002, and also placed reliance on the statements of two secret witnesses whose statements were recorded on 3.4.2002. Bunch of papers supplied with the grounds of detention served to the detenu reveals that these two witnesses had narrated the activities of the petitioner detenu in reference to the locality where they reside and had narrated two different incidents in their respective statements allegedly occurred on 17.2.2002 and 10.3.2002 respectively. However, in the grounds of detention, the detaining authority has mentioned wrong date while describing the incident occurred on 17.2.2002 and it is erroneously shown as 10.2.2002. It is argued by ld. counsel Ms. Banna Datta for Mr. A.R.Shaikh, ld. counsel for the petitioner detenu that this can be said to be non-application of mind by the detaining authority.

3. The impugned order of detention has been challenged on number of grounds by the petitioner. However, ld. counsel Ms. Banna Datta has restricted her arguments mainly on two points. The first point argued by ld. counsel Ms. Datta is that the order of detention is passed in undue haste and on mechanical application of mind and such a harsh decision ought not to have been taken by the detaining authority when apparently the name of the petitioner was not disclosed even in the FIR registered with the Athwa Lines Police Station. The second point argued by ld. counsel is that there is a solitary offence and in absence of any prior antecedents involving the petitioner into any bootlegging activities, there was no scope for branding the petitioner as a "bootlegger". Thus, the subjective satisfaction recorded on this count can be said to be erroneous. While developing the first point, it has been pointed out by ld. counsel for the petitioner that the offence was

registered with Athwa Lines Police Station on 29.3.2002. On 1.4.2002, the petitioner was arrested on the strength of the statement recorded by the investigating officer, though the petitioner has not been named in the FIR. Thereafter, the statements of witnesses have been recorded on 3.4.2002 while the petitioner was in custody as he has been enlarged on bail on 5.4.2002. These statements of the witnesses were verified by the detaining authority on 6.4.2002 and on 7.4.2002, impugned order of detention has been passed.

4. It is important to note that of course the detaining authority can pass the order of detention in very urgent and important matter on non-working day in an extreme exigency. Undisputedly, 6.4.2002 being Saturday, government offices were working, but on 7.4.2002, offices must have been closed on account of a public holiday viz. Sunday. Thus, there was no need to pass order of detention on Sunday when a person is found involved in a solitary prohibition case.

5. Ld. counsel Ms. Datta appearing for the petitioner detenu has submitted that the present case is covered by the decision of this Court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) v/s State of Gujarat & Others, 2000(3) GLR 2696 (Vol.XLI (3). Ld. Single Judge of this Court, after referring to the decision in the case of Kalidas C.Kahar v/s State of Gujarat, 1993(2) GLR 1659, has held that exercise of powers by the detaining authority was mechanical and devoid of application of mind and, therefore, detention order requires to be quashed. I have considered the above-cited decisions and if relevant dates are considered, I am satisfied that the present case is squarely covered by the aforesaid decisions as facts of both the cases are similar in nature. It is also submitted that in number of decisions, this Court has consistently quashed and set aside the orders of detention where there is non-application of mind or mechanical application of mind. Under the circumstances, without entering into the merits of the other grounds, impugned order of detention requires to be quashed and set aside on this sole ground. It is, therefore, held that impugned order of detention is bad-in-law and suffers from the vice of undue haste and suffers from non-application of mind.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 7.4.2002 passed by the Commissioner of Police, Surat City, is hereby quashed and set aside and detenu is hereby ordered

to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

30-7-2002 [C. K.BUCH, J]
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